

RETURN

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TO AN ORDER OF THE HOUSE OF COMMONS, dated 7th December, 1910, for a copy of Sir John Thompson's memorandum on the question of the rights of fishing in the bays of British North America, prepared for the use of the British Plenipotentiaries at Washington in 1888, and a copy of the Treaty agreed to and approved by the President.

CHAS. MURPHY,

Secretary of State.

Ottawa, December 13, 1910.

Sir,—

With reference to an order of the House of Commons on motion of Mr. Foster for copy of Sir John Thompson's memorandum on the subject of the rights of fishing in the Bays of British North America prepared in 1888, and also copy of the Treaty agreed to by the United States on that occasion, I have the honour to enclose herewith copy of the Treaty in question, but as regards Sir John Thompson's memorandum, I regret to say that no copy of this document appears on the files of this, or so far as I am aware, of any public department.

The document in question was of a confidential character, and was treated as such at the time.

I have the honour to be, Sir,

Your obedient servant,

JOSEPH POPE,

Under Secretary of State

for External Affairs.

Thomas Mulvey, Esq., K.C.,

Under Secretary of State of Canada,

Ottawa.

Treaty between Great Britain and the United States, for the settlement of the Fishery Question on the Atlantic Coast of North America.—Signed at Washington, February 15, 1888.*

WHEREAS, differences have arisen concerning the interpretation of Article I of the Convention of the 20th October, 1818;* Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of America, being mutually desirous of removing all causes of misunderstanding in relation thereto, and of promoting friendly intercourse and good neighbourhood between the United States and the possessions of Her Majesty in North America, have resolved to conclude a Treaty to that end, and have named as their Plenipotentiaries, that is to say:

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable Joseph Chamberlain, M.P.; the Honourable Sir Lionel Sackville Sackville West, K. C. M. G., Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; and Sir Charles Tupper, G. C. M. G., C. B., Minister of Finance of the Dominion of Canada;

And the President of the United States, Thomas F. Bayard, Secretary of State; William L. Putnam, of Maine; and James B. Angell, of Michigan.

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ART. I. The High Contracting Parties agree to appoint a Mixed Commission to delimit, in the manner provided in this Treaty, the British waters, bays, creeks, and harbours of the coasts of Canada and of Newfoundland, as to which the United States, by Article I of the Convention of the 20th October, 1818, between Great Britain and the United States, renounced for ever any liberty to take, dry, or cure fish.

II. The Commission shall consist of two Commissioners to be named by Her Britannic Majesty, and of two Commissioners to be named by the President of the United States, without delay, after the exchange of ratifications of this Treaty.

The Commission shall meet and complete the delimitation as soon as possible thereafter.

In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act as such, the President of the United States or Her Britannic Majesty, respectively, shall forthwith name another person to act as Commissioner instead of the Commissioner originally named.

*This Treaty was not ratified, and it did not therefore come into force.

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III. The delimitation referred to in Article I of this Treaty shall be marked upon British Admiralty charts by a series of lines regularly numbered and duly described. The charts so marked shall, on the termination of the work of the Commission, be signed by the Commissioners in quadruplicate, three copies whereof shall be delivered to Her Majesty's Government, and one copy to the Secretary of State of the United States. The delimitation shall be made in the following manner, and shall be accepted by both the High Contracting Parties as applicable for all purposes under Article I of the Convention of the 20th October, 1818, between Great Britain and the United States.

The 3 marine miles mentioned in Article I of the Convention of the 20th October, 1818, shall be measured seaward from low watermark; but at every bay, creek or harbour, not otherwise specially provided for in this Treaty, such 3 marine miles shall be measured seaward from a straight line drawn across the bay, creek, or harbour, in the part nearest the entrance at the first point where the width does not exceed ten marine miles.

IV. At or near the following bays the limits of exclusion under Article I of the Convention of the 20th October, 1818, at points more than 3 marine miles from low-water mark, shall be established by the following lines, namely:

At the Baie des Chaleurs the line from the light at Birch Point on Miscou Island to Macquereau Point light; at the Bay of Miramichi, the line from the light at Point Escuminac to the light on the eastern point of Tabusintac Gully; at Egmont Bay, in Prince Edward Island, the line from the light at Cape Egmont to the light at West Point; off St. Ann's Bay, in the Province of Nova Scotia, the line from Cape Smoke to the light at Point Aconi.

At Fortune Bay in Newfoundland, the line from Connaigre Head to the light on the south-easterly end of Brunet Island, thence to Fortune Head; at Sir Charles Hamilton Sound, the line from the south-east point of Cape Fogo to White Island, thence to the north end of Peckford Island, and from the south end of Peckford Island to the east headland of Ragged Harbour.

At or near the following bays the limits of exclusion shall be 3 marine miles seaward from the following lines, namely:

At or near Barrington Bay, in Nova Scotia, the line from the light on Stoddard Island to the light on the south point of Cape Sable, thence to the light at Bacarro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island light to Green Island light, thence to Point Rouge; at Mira Bay, the line from the light on the east point of Scatari Island to the north-easterly point of Cape Morien; and at Placentia Bay, in Newfoundland, the line from Latine Point, on the eastern mainland shore, to the most southerly point of Red Island, thence by the most southerly point of Merasheen Island to the mainland.

Long Island and Bryer Island, at St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, to be taken as the coasts of such Bay.

V. Nothing in this Treaty shall be construed to include within the common waters any such interior portions of any bays, creeks, or harbours as cannot be reached from the sea without passing within the 3 marine miles mentioned in Article I of the Convention of the 20th October, 1818.

VI. The Commissioners shall, from time to time, report to each of the High Contracting Parties, such lines as they may have agreed upon, numbered, described, and marked as herein provided, with quadruplicate charts thereof; which lines so reported shall forthwith from time to time be simultaneously proclaimed by the High Contracting Parties, and be binding after two months from such proclamation.

VII. Any disagreement of the Commissioners shall forthwith be referred to an umpire selected by Her Britannic Majesty's Minister at Washington and the Secretary of State of the United States; and his decision shall be final.

VIII. Each of the High Contracting Parties shall pay its own Commissioners and officers. All other expenses jointly incurred, in connection with the performance of the work, including compensation to the umpire, shall be paid by the High Contracting Parties in equal moieties.

IX. Nothing in this Treaty shall interrupt or affect the free navigation of the Strait of Canso by fishing-vessels of the United States.

X. United States fishing-vessels entering the bays or harbours referred to in Article I of this Treaty shall conform to harbour regulations common to them and to fishing-vessels of Canada or of Newfoundland.

They need not report, enter, or clear, when putting into such bays or harbours for shelter or repairing damages, nor when putting into the same, outside the limits of established ports of entry, for the purpose of purchasing wood or of obtaining water; except that any such vessel remaining more than 24 hours, exclusive of Sundays and legal holidays, within any such port, or communicating with the shore therein, may be required to report, enter, or clear; and no vessel shall be excused hereby from giving due information to boarding officers.

They shall not be liable in such bays or harbours for compulsory pilotage; nor, when therein, for the purpose of shelter, of repairing damages, of purchasing wood, or of obtaining water shall they be liable for harbour dues, tonnage dues, buoy dues, light dues or other similar dues; but this enumeration shall not permit other charges inconsistent with the enjoyment of the liberties reserved or secured by the Convention of the 20th October, 1818.

XI. United States' fishing-vessels entering the ports, bays, and harbours of the eastern and north-eastern coasts of Canada or of the coasts of Newfoundland under stress of weather or other casualty may unload, reload, tranship, or

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sell, subject to customs laws and regulations, all fish on board, when such unloading, transshipment, or sale is made necessary as incidental to repairs, and may replenish outfits, provisions and supplies, damaged or lost by disaster; and in case of death or sickness, shall be allowed all needful facilities, including the shipping of crews.

Licences to purchase in established ports of entry of the aforesaid coasts of Canada or of Newfoundland, for the homeward voyage, such provisions and supplies as are ordinarily sold to trading vessels, shall be granted to United States' fishing-vessels in such ports, promptly upon application and without charge; and such vessels having obtained licences in the manner aforesaid, shall also be accorded upon all occasions, such facilities for the purchase of casual or needful provision and supplies as are ordinarily granted to trading vessels; but such provisions or supplies shall not be obtained by barter nor purchased for resale or traffic.

XII. Fishing-vessels of Canada and Newfoundland shall have on the Atlantic coasts of the United States all the privileges reserved and secured by this Treaty to United States' trading-vessels in the aforesaid waters of Canada and Newfoundland.

XIII. The Secretary of the Treasury of the United States shall make regulations providing for the conspicuous exhibition by every United States' fishing vessel of its official number on each bow; and any such vessel required by law to have an official number, and failing to comply with such regulations, shall not be entitled to the licences provided for in this Treaty.

Such regulations shall be communicated to Her Majesty's Government previously to their taking effect.

XIV. The penalties for unlawfully fishing in waters, bays, creeks and harbours, referred to in Article I. of this Treaty, may extend to forfeiture of the boat or vessel and appurtenances, and also of the supplies and cargo aboard when the offence is committed; and for preparing in such waters to unlawfully fish therein, penalties shall be fixed by the Court, not to exceed those for unlawfully fishing; or for any other violation of the laws of Great Britain, Canada or Newfoundland, relating to the right of fishing in such waters, bays, creeks or harbours, penalties shall be fixed by the Court, not exceeding in all 3 dollars for every ton of the boat or vessel concerned. The boat or vessel may be holden for such penalties and forfeitures.

The proceedings shall be summary and as inexpensive as practicable. The trial (except on appeal) shall be at the place of detention, unless the Judge shall on request of the defence, order it to be held at some other place adjudged by him more convenient. Security for costs shall not be required of the defence except when bail is offered. Reasonable bail shall be accepted. There shall be proper appeals available to the defence only, and the evidence at the trial may be used on appeal.

Judgments of forfeiture shall be reviewed by the Governor General of Canada in Council, or by the Governor in Council of Newfoundland, before the same are executed.

XV. Whenever the United States shall remove the duty from fish-oil, whale-oil, seal-oil, and fish of all kinds, (except fish preserved in oil), being the produce of fisheries carried on by the fishermen of Canada and of Newfoundland, including Labrador, as well as from the usual and necessary casks, barrels, kegs, cans and other usual and necessary coverings containing the products above mentioned, the like products, being the product of fisheries carried on by the fishermen of the United States, as well as the usual and necessary coverings of the same, as above described, shall be admitted free of duty into the Dominion of Canada and Newfoundland.

And upon such removal of duties, and while the aforesaid articles are allowed to be brought into the United States by British subjects, without duty being reimposed thereon, the privilege of entering the ports, bays and harbours of the aforesaid coasts of Canada and of Newfoundland shall be accorded to United States' fishing-vessels by annual licences, free of charge, for the following purposes, namely:—

1. The purchase of provisions, bait, ice, seines, lines, and all other supplies and outfits;
2. Transshipment of catch, for transport by any means of conveyance.
3. Shipping of crews.

Supplies shall not be obtained by barter, but bait may be so obtained.

The like privileges shall be continued or given to fishing-vessels of Canada and of Newfoundland on the Atlantic coasts of the United States.

XVI. This Treaty shall be ratified by Her Britannic Majesty, having received the assent of the Parliament of Canada and of the Legislature of Newfoundland; * and by the President of the United States, by and with the advice and consent of the Senate; and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, we, the respective Plenipotentiaries, have signed this Treaty, and have hereunto affixed our seals.

Done in duplicate, at Washington, this 15th day of February, in the year of our Lord 1888.

(L.S.) J. CHAMBERLAIN.

(L.S.) L. S. SACKVILLE WEST.

(L.S.) CHARLES TUPPER.

(L.S.) T. F. BAYARD.

(L.S.) WILLIAM L. PUTNAM.

(L.S.) JAMES B. ANGELL.

* The Treaty was assented to by the Government of Canada, May 4, 1888 (see page 550), and by the Government of Newfoundland, May 9, 1888 (see page 95), but it was not ratified by the Senate of the United States.

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Protocol, dated February 15, 1888.

THE Treaty having been signed, the British Plenipotentiaries desire to state that they have been considering the position which will be created by the immediate commencement of the fishing season before this treaty can possibly be ratified by the Senate of the United States, by the Parliament of Canada, and Legislature of Newfoundland.

In the absence of such ratification the old conditions which have given rise to so much friction and irritation might be revived, and might interfere with the unprejudiced consideration of the Treaty by the legislative bodies concerned.

Under these circumstances, and with the further object of affording evidence of their anxious desire to promote good feeling and to remove all possible subjects of controversy, the British Plenipotentiaries are ready to make the following temporary arrangements for a period not exceeding two years, in order to afford a *modus vivendi* pending the ratification of the Treaty:

1. For a period not exceeding two years from the present date, the privilege of entering the bays and harbours of the Atlantic coasts of Canada and Newfoundland shall be granted to United States' fishing-vessels by annual licenses at a fee of $1\frac{1}{2}$ dollars per ton, for the following purposes:

The purchase of bait, ice, seines. lines, and all other supplies and outfits.

Transshipment of catch and shipping of crews.

2. If, during the continuance of this arrangement, the United States should remove the duties on fish, fish-oil, whale and seal-oil (and their coverings, packages, etc.) the said licences shall be issued free of charge.

3. United States' fishing-vessels entering the bays and harbours of the Atlantic coasts of Canada or of Newfoundland for any of the four purposes mentioned in Article I. of the Convention of the 20th October, 1818, and not remaining therein more than 24 hours, shall not be required to enter or clear at the custom-house, providing that they do not communicate with the shore.

4. Forfeiture to be exacted only for the offences of fishing or preparing to fish in territorial waters.

5. This arrangement to take effect as soon as the necessary measures can be completed by the Colonial authorities.

Washington, February 15, 1888.

J. CHAMBERLAIN..

L. S. SACKVILLE WEST.

CHARLES TUPPER.

Protocol, dated February 15, 1888.

THE American Plenipotentiaries having received the communication of the British Plenipotentiaries of this date conveying their plan for the administration to be observed by the Governments of Canada and Newfoundland in respect of their fisheries during the period which may be requisite for the consideration by the Senate of the Treaty this day signed, and the enactment of the legislation by the respective Governments therein proposed, desire to express their satisfaction with this manifestation of an intention on the part of the British Plenipotentiaries, by the means referred to, to maintain the relations of good neighbourhood between the British possessions in North America and the United States; and they will convey the communication of the British Plenipotentiaries to the President of the United States, with the recommendation that the same may be by him made known to the Senate, for its information, together with the Treaty, when the latter is submitted to that body for ratification.

Washington, February 15, 1888.

T. F. BAYARD.

WILLIAM L. PUTNAM.

JAMES B. ANGELL.